EXHIBIT C

UNITED STATES OF AMERICA

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

MDL-1592 In re Columbia University Patent Litigation

(Excerpt of proceedings as to the above-entitled case only)

Oral Argument on the above-described multidistrict litigation case pursuant to 28 U.S.C. 1407, heard before the Hon. Wm. Terrell Hodges, Chairman; John F. Keenan, Bruce M. Selya, D. Lowell Jensen, J. Frederick Motz, Robert L. Miller, Jr., and Kathryn H. Vratil, Judges of the Panel, at 9:59 a.m. on Tuesday, March 23, 2004, in Courtroom 13 A, United States District Courthouse, 300 N. Hogan Street, Jacksonville, Florida.

Reported by:

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March 23, 2004 P R O C E E D I N G S 9:59 a.m.

THE COURT: The next case on the docket is MDL-1592, a new docket which we've denominated the Columbia University Patent Litigation. At the moment we are aware of seven actions pending in different districts in which the defendant in each case has moved for centralization under Section 1407. And the first to be heard in support of that motion, I believe, is Mr. Gindler. 09:59

JUDGE JENSEN: And I would be recused in this case. 10:00

THE COURT: All right. Judges Selya and Jensen are recused.

MR. GINDLER: Good morning, Your Honors. My name is David Gindler. I represent Columbia University.

You mentioned that there were seven cases pending, and that was true when we filed our motion for centralization. There are now eight cases pending. There was seven involving 11 biotech companies. Now there are eight, involving 12. 10:00

The last case involves a company called Serrano, which has alleged the same bases for invalidating Columbia's patent as all the other cases. The principal bases are double patenting, prosecution of laches, and inequitable conduct. There are some additional allegations in that case shared by some, but not all of the other cases. But the 10:00 10:01

test, of course, is common questions, not identical questions. 10:01

There have been a couple of things which have happened since the papers have been filed. Just recently, Columbia sent termination notices to many of the licensees. 10:01

Now, this raises an issue that some of the licensees, the plaintiffs, raised in their papers, which is, will there be claims by Columbia back against the biotech companies for infringement or for breach of contract? And the answer is, probably. Again, some of them. We've already asserted claims against three of them, I believe, and there probably will be more coming. So the question is, does that make a difference? And I think the answer is no. 10:01

Does it make a difference for a couple of reasons? The first reason is, all those claims are going to require claim construction. An infringement case will require a Markman hearing. Just as well, all of the claims by the plaintiffs against Columbia, those will all require a Markman hearing. And so that will be the central event in all of the cases, the claim construction hearing. So it makes no difference. 10:02

And, in fact, the vast majority of the cases, the published cases on multidistrict litigation involving patents involve infringement cases, not invalidity cases where courts have held if you have many cases which are 10:02

pending, involving one patent asserted against many parties, they should be done together. 10:02

Well, here we have many biotech companies trying to invalidate a patent which is owned by Columbia, and Columbia may have counterclaims. And those should all be done together. 10:02

There has been another development since the filing of the papers, and that is the lack of cooperation among the plaintiffs. I know that one factor the court considers is: Can we deal with this issue simply by encouraging informal coordination? Well, as the court may have seen, no one has offered to coordinate discovery or anything across all of the cases. 10:03

And since the filing of the papers, two things have happened. One is that Serrano, the most recent case to be filed, wanted to serve some discovery. And they called me up and said, We want to serve some documents requests. I responded by saying, well, we have an MDL motion pending, why don't you wait? They said, We'd rather not. And they served the document requests, and we objected. 10:03

A second thing that's happened is that the plaintiffs in the Amgen case tried to barrel forward with discovery in their action. The clerk sent out an order setting a trial date and a discovery cutoff date, and Amgen responded by saying, Great, let's have discovery. And 10:04

Columbia responded by saying, Well, we have an MDL hearing which is coming up, why don't we just wait and see what happens. And Amgen said no. 10:04

And there was a hearing held yesterday before Judge Pfaelzer, who said, Why don't we wait and see what the Panel does before doing anything. We can always adjust our schedule. 10:04

Recently, I think in the past couple of days, one of the plaintiffs raised a question about jurisdiction in the action in San Francisco, the action found by Genentech. There is a recent case from the Federal Circuit called GenProbe, and that decision holds that if a licensee is paid under his license, still has his license, hasn't been terminated, that licensee doesn't have standing to sue to invalidate the patent. Genentech is a licensee. They say they have been paying, and they are still suing to invalidate the patent. 10:04 10:05

We did serve Genentech with a termination notice because we don't agree that they are paying the proper amounts under the agreement. They haven't permitted us to conduct an audit, and so I don't think there's a GenProbe issue there. 10:05

There also is quite a lot of authority for the proposition that a case that has a jurisdictional challenge pending can still be transferred. There's also case law for 10:05

the proposition that you can still transfer a case to the district where a jurisdictional challenge has been set. 10:05

As we've said in our papers, we think the best court for centralization is the Northern District of California. I think one of our principal reasons for that is the Northern District has a very comprehensive set of patent local rules which govern how patent cases proceed. I see that as -- 10:05

JUDGE MOTZ: But those rules can be incorporated into a pretrial order by another court. That happens all the time. 10:06

MR. GINDLER: That could, and that would be fine, except I expect there to be a lot of jockeying among the parties here to try to create a case schedule that best benefits them. By having a set of rules that are in place as the governing rules, subject to possible modification, I think is a better starting place than no rules, with each party jockeying for a better procedural posture. 10:06

There's a lot of possibility for that here. We have 12 biotech companies. We have Columbia University. There's a lot of money at stake, and everyone will be trying to push the envelope to the maximum position. I think having a set of rules in place that has a level playing field, that's been tested over time, is a smart place to start. Thank you. 10:06

THE COURT: Thank you, Mr. Gindler. 10:07

You do have a minute reserved for rebuttal.

MR. GINDLER: Thank you.

THE COURT: Next to be heard in opposition to the motion for centralization as I understand it is 10:07 Mr. Wineburg.

MR. WINEBURG: Thank you, Mr. Chairman. I speak in opposition to the motion.

Judge Pfaelzer, presiding in the Amgen case in the Central District, is prepared to hear this case this year. 10:07 She's entered a scheduling order that had trial on December 7th. Upon request of Columbia last Friday, she held a telephonic conference yesterday in which she stayed discovery pending the decision of this Panel. But she promised to modify the schedule only by the time it takes 10:07 this Panel to decide.

So Judge Pfaelzer is prepared to have trial in the Amgen case this year. And we submit that that serves the purpose of justice, convenience and efficiency.

With respect to justice, we have at risk many 10:08 millions of dollars. There's a cloud of uncertainty overlooking Amgen, and we filed a declaratory judgment action that would resolve that cloud and remove it. And we believe we're entitled to the termination, and Judge Pfaelzer is prepared to give it to us. So the only old 10:08

saying I think applies: Justice delayed, may be justice denied. 10:08

With respect to convenience, Columbia talks about some testimony will be given on multiple occasions, or will be required if these cases aren't transferred. I submit that with respect to the key witnesses -- that's the inventors, these are the people that are earning 20 percent of all royalties paid -- that there will be multiple days of deposition, regardless of whether there's transfer or not. However, I submit that if these cases are not transferred, the second and third depositions will supplement the first and will not retrace the old questions. 10:08 10:09

In fact, what Columbia really wanted was a 1404 motion to avoid multiple trials. They admitted that 1407 wouldn't really solve their problem. And I submit that they've elected to go 1407 as the second-best solution when Judge Pfaelzer denied the 1404 motion, because it provides them with delay, not -- they're not interested in expediting the case, they're interested in delay. 10:09

So with respect to the judicial efficiency, I submit that let Amgen have its early trial. If Amgen wins, all the cases go away. And in any event, the Amgen case will be tried before any Markman hearing would be held. And so I would suggest that the other parties and the judges presiding over those cases could at that point decide 10:10

whether to stay Markman and some other proceedings in those cases, pending resolution of the Amgen case on appeal. 10:10

THE COURT: Mr. Wineburg, your time has expired, and I think we do understand your position.

MR. WINEBURG: Thank you, Your Honor. 10:10

THE COURT: Next to be heard is Ms. Pruetz, representing the plaintiff opposing centralization.

MS. PRUETZ: Good morning, Your Honors. Adrian Pruetz for the plaintiff, Genentech.

Consolidating the cases of these competitors is only going to delay their resolution because there are many more issues that divide us than those that unite us in this case. 10:11

Genentech, in particular, filed suit a year ago in its home forum, the Northern District of California. Genentech's suit was very narrowly focused on the double patenting issues, prosecution laches, and certain elements of inequitable conduct, to get this case to trial immediately. And that was about to happen when this MDL proceeding was commenced by Columbia University. There was already a scheduling order in place, because of the Northern District local rules, that would have had a claim construction hearing being held next week, on March 29th. That was derailed by the filing of this motion, in which everything has been stayed pending the outcome. 10:11 10:11

It would not be efficient, convenient or just for Genentech, or really any of these parties to be consolidated into the kind of unwieldy case that is resulting from the posture that Columbia has taken. 10:12

As Mr. Gindler pointed out to the Panel, Columbia has now served termination notices on all of the plaintiffs. There are going to be a multiplicity of infringement claims, and this is added to what already are unique distinctions between the different cases dealing with the very different terms of the parties' licenses. 10:12

There are more than 25 complicated and unrelated biotechnology products, highly proprietary to each these companies, which are competitors. There will have to be -- I mean, every party would have to endure discovery and seek multiple layers of protection in order to avoid disclosure of their proprietary manufacturing processes. 10:12

If you look at the different claims in the cases, even going beyond the very separate factual issues of infringement, there are enormously different factual issues asserted as bases for invalidity. There are -- 10:13

JUDGE MOTZ: From the point of view, to the extent there are common issues, from the point of view of justice, Columbia runs the risk, if they lose in any of these cases, collateral estoppel, which then bars it, but its opponents would be free to litigate. Is that right? Should that be 10:13

permitted? It seems like it's somewhat of a one-way street. 10:13

MS. PRUETZ: Well, if the patent is invalidated, there won't be any further litigation. And Mr. Wineburg is correct, that if Amgen gets to trial first and the patent is invalidated, that's the end of the line in all of the cases. 10:13

I think Mr. Gindler made a point that the parties were not cooperating. That's not the case. Where it is efficient for the parties to hold a single deposition, that's going to happen. That's in everybody's best interest. 10:13

To move along on the invalidation front, there will be as much cooperation as there needs to be. What there can't be is cooperation on all of these multiple issues unique to the parties because --

JUDGE MOTZ: Excuse me, but you didn't answer my question. If the patient is invalidated, obviously it's over for Columbia. If the patent is invalidated, what effect is that going to have in the other litigation? Because the other parties are -- you know, are not barred by collateral estoppel. 10:14

MS. PRUETZ: That's correct, Your Honor. If there were additional bases alleged that hadn't been tried, and perhaps even the ones that were alleged, there would be no collateral estoppel for other plaintiffs to continue to challenge the patent. 10:14

Now, if the matter is consolidated, which we oppose, we believe also that the Northern District of California is the most appropriate place. It does have a set of patent local rules in place, which have been lauded by other courts as being extremely efficient, streamlining the process. Three times as many patent cases and intellectual property cases are heard in the Northern District of California as in Boston, Massachusetts, for example. 10:14 10:14

THE COURT: How many of these cases are presently pending in that district, counsel, in the Northern District of California? 10:15

MS. PRUETZ: I don't have the exact figure for how many cases exactly there are pending.

THE COURT: There are at least two cases, according to the information -- 10:15

MS. PRUETZ: Oh, in this case? I thought you were asking in general. In this case, yes, there are two cases pending.

THE COURT: And they're presently assigned to different judges? 10:15

MS. PRUETZ: Yes, they are. They were determined to be unrelated. Columbia moved to relate the cases and have them assigned to a single judge, but because of the numerous unique issues dealing with these different parties 10:15

and their products, the judge in the Northern District determined that they were not related. 10:15

THE COURT: Which judge?

MS. PRUETZ: Judge Walker. And Judge Walker has presided over some 120 patent cases. He's written 21 published patent opinions. 10:15

If the case were to proceed in the Northern District, I would submit to the Panel that it would be very convenient for all the parties, wherever they're located, because the Northern District also has mandatory e-filing, such that any party, wherever they are, can electronically file their papers and needn't have the cumbersome situation of local counsel and having multiple layers of lawyers getting involved and getting their filings. 10:15

And if the case were to go to the Northern District and the stay would then be lifted and a very streamlined and sequenced schedule would be set up for claim construction and all of the other matters that have to be dealt with. 10:16

THE COURT: Your time has expired, Ms. Pruetz, and I think we understand your position. 10:16

MS. PRUETZ: Thank you, Your Honors.

THE COURT: Next to be heard is Mr. Ware, representing plaintiffs who also oppose centralization.

MR. WARE: Thank you, Mr. Chairman. 10:16

And the thrust of my presentation is to say that although we oppose the MDL transfer, if there is a transfer, the group that I represent, or that for whom I am speaking, would urge that that transfer be to Massachusetts. 10:16

I'm speaking on behalf of eight plaintiffs who have filed complaints in Massachusetts. There are actually four cases now pending in Massachusetts, including the tag-along Serrano case that was referred to by Mr. Gindler. All of them are assigned to Judge Wolf, and so I really have two principal points that I'd like to make in support of Massachusetts. 10:17 10:17

One is, simply, we think it makes no sense to drag four cases and eight plaintiffs out of Massachusetts off to the Northern District of California. Out of the 13 parties involved in this matter, there are only two, Columbia and Genentech, who favor the Northern District of California. And we simply do not understand. We understand Genentech's reasoning, and that's where they're based. 10:17

But Columbia, of course, is based in New York, and it's a little bit unusual for a university to want to move 3,000 miles away for litigation. Certainly not for the convenience of the witnesses and parties, as Section 1407 requires. Most of the parties are on the East Coast. Most of them actually are based in Massachusetts. There is one that is in Switzerland. So this is a very East 10:17 10:18

Coast-centered matter. 10:18

The other point I wanted to make is that the -- we think the most important efficiency factor -- and I think all of the plaintiffs are very interested in efficiency here and we want to get this case resolved -- we think the most 10:18 important efficiency factor in this case in this matter is the familiarity of the court with the very complex biotechnology that is involved.

Most of the lawyers, I can tell you in this case, are not molecular biologists, and believe me, there is a 10:18 very steep learning curve to understand the cotransformation, DNA -- recombinant DNA technology that is involved in Columbia's patent.

Massachusetts presents a real opportunity in that regard. There are actually two judges in the country who 10:19 have published decisions about the cotransformation technology and have both addressed the Columbia patents, and they are both in Massachusetts. One is Judge Wolf and one is Judge Gertner.

Judge Wolf we discussed in our brief. Judge Wolf 10:19 had an extensive published opinion which is in effect a tutorial on this very technology, and he dealt with the Columbia patent.

Judge Gertner -- we did not mention this in our brief -- but Judge Gertner has also had a case where 10:19

Columbia actually choose to bring suit on its own patents, on these patents that are involved in this case, in Massachusetts against a third party called Roche Diagnostics. Judge Gertner has already construed claims in the patents and is quite familiar with the technology. 10:19

So if Judge Wolf, who presently has the cases, were not able to take an MDL for any reason, Judge Gertner would equally be familiar with the technology.

So we think that in terms of bringing this to closure efficiently, having a judge that doesn't have to go through tutorials to learn about cotransformation technology, gives us the best efficiency factor. Thank you. 10:20

THE COURT: All right. Thank you.

Mr. Gindler, you have one minute remaining.

JUDGE KEENAN: Mr. Gindler, does the fact that Judge Walker, who is a very experienced judge, who has handled an awful lot of multidistrict litigation matters, said these cases are not related, and refused to take one as related to the other, does that have any bearing on whether or not the Panel should treat this as something that's subject to 1407(3)? 10:20

MR. GINDLER: I don't think so. We don't know anything about what Judge Walker's decision was based upon. It's a form, it's if he checks off a box whether something is related or not in the same district. So it's simply a 10:20

black box to us.

What we do know is that upon being told of the MDL motion, Judge Walker stayed his case when Genentech tried to barrel ahead with depositions of the inventors and said, We're going to wait until we have an MDL ruling. So I think he recognizes that things have to pause to see what the Panel in fact does. 10:20 10:21

I've heard a number of the plaintiffs argue that --

JUDGE MOTZ: My question to you is: Why not Massachusetts? 10:21

MR. GINDLER: I think the answer to the question is this: Any one of the four districts in which the actions are pending would be fine for centralization. They each have their benefits and their detriments in terms of weighing where it should go. There are benefits to Massachusetts; there are benefits to New York. 10:21

The one benefit which I think the Northern District has, which stands out, is the application of these rules, the patent local rules at the starting point. I see that as extremely important in setting forth a level playing field at the very beginning of this matter. Otherwise, I'm concerned that chaos will result. 10:21

We do not want delay. Delay is not in our interest. We have a number of licensees who are not paying 10:22

on their license agreements. It's much better for us to get this matter resolved quickly because if our patent is upheld to be valid, as we think it will be, we get paid again. So delay does not help us. Thank you. 10:22

THE COURT: All right. Thank you all. We will take the matter under submission. 10:22

(Proceedings concluded at 10:22 a.m.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
MIDDLE DISTRICT OF FLORIDA

I hereby certify that the foregoing transcript is a true and correct computer-aided transcription of my stenotype notes taken at the time and place indicated therein.

L. Marie Splane 5/4/2004

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